

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:10-CV-470-H

JAMES BURK and SHANNON BURK,)
Guardians Ad Litem for A.B.,)
JAMES BURK, Individually, and)
SHANNON BURK, Individually,) MOTION FOR APPROVAL
Plaintiffs,) OF MINOR SETTLEMENT
)
vs.)
)
THE UNITED STATES OF AMERICA,)
Defendant.)

The Parties have agreed to settle this matter for a total sum of \$10 (ten) million dollars. The Parties jointly move this Honorable Court for review of the proposed settlement on behalf of the Minor Plaintiff A.B. Plaintiffs move the Court to find that said settlement is in the best interest of the Minor Plaintiff and to approve the settlement.¹ In support of their motion for court approval of settlement, Plaintiffs show unto the Court the following.

¹ The United States is unable to join in a motion requesting approval of settlement because it is an inherent conflict of interest for the United States to make representations regarding the best interests of an opposing party. Plaintiffs are in the best position to make representations to the Court regarding the best interest of the Minor Plaintiff, A.B. The United States may join in a motion requesting judicial review of the settlement.

1. The Minor Plaintiff, as a dependent of an active duty serviceman currently receives all of her healthcare through military medical facilities and Tricare. She also receives some therapy through the school system as mandated by the Individual with Disabilities Education Act (IDEA). See 20 U.S.C. Statute 1400 et. seq.

2. If her father remains on active duty with the Army and obtains 20 (twenty) years of military service, which is his present intention, the Minor Plaintiff will continue to receive healthcare through Tricare throughout her lifetime.

3. Should her father die prior to reaching 20 (twenty) years of active duty service, the Minor Plaintiff will continue to receive healthcare from Tricare throughout her lifetime.

4. The \$10 (ten) million dollar settlement will be distributed as follows:

a. Trust - Four (\$4) million dollars will be placed into an Irrevocable Reversionary Inter Vivos Grantor Medical Care Trust ("Trust") for the benefit of the Minor Plaintiff. The United States is the Grantor of the Trust and retains a reversionary interest in the Trust Estate, effective upon the termination of the Trust, as provided in Article XIX of the Trust. The Trust covers

medical care for the Minor Plaintiff, per the terms of the Trust, which medical care is not covered by other sources, such as Tricare. This Trust is further described in documents that have been provided to chambers.

b. Up-front cash - Six (\$6) million dollars will be paid to Plaintiffs as up-front cash and will be distributed by their counsel as follows.

i. Two (\$2) million dollars will be placed in a Trust privately created by Plaintiffs, wherein the United States is not the Grantor, which Trust will be administered by the Halpern Group and SunTrust Bank, for the benefit of the Minor Plaintiff. This privately created Trust will cover items and services that are not covered by the Irrevocable Reversionary Inter Vivos Grantor Medical Care Trust set out in paragraph 4(a), above. This privately created Trust is further described in documents that have been provided to Chambers.

ii. One and a half (\$1.5) million dollars will be distributed to Plaintiffs James Burk and Shannon Burk in settlement for their individual claims.

iii. Two and a half (\$2.5) million dollars will be distributed to Plaintiffs' attorney, R. Bailey Melvin of The Melvin Law Firm, as compensation for attorney's fees and reimbursement of expenses. The Melvin

Law Firm incurred costs and expenses to date of \$77,589.25. Per the Parties' agreement in the Stipulation of Compromise Settlement and Release, page 5, Plaintiffs agreed to pay the costs of obtaining Court approval of this settlement. Hence, the Court's approval of costs to be disbursed from the up-front case portion of the settlement funds must specifically include authorization to pay Dr. Shapley's fees from the up-front cash portion of the settlement. This two and a half (\$2.5) million dollar payment will cover both a contingent fee of slightly less than the allowed 25% contingent fee and reimbursement of expenses, including Dr. Shapley's fees. See 28 U.S.C. Statute 2678.

Based on the facts and reason set out above, the Plaintiffs move the Court to approve this settlement as one that is in the best interests of the Minor Plaintiff A.B. Attached is Exhibit A to this Motion is a jointly proposed Order, which is based on a model Order provided by the United States Department of Justice and which contains all of the required language to approve the settlement of a Federal Tort Claims Act case between a minor plaintiff and the United States. A copy has been transmitted to chambers.

Respectfully submitted, this the 8th day of February,
2013.

/s/ R. Bailey Melvin

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 8th day of February, 2013 served a copy of the foregoing electronically filing the foregoing with the Court on this date using the CM/ECF system and/or by placing a copy of the same in the U.S. Mail addressed as follows:

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